

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: January 13, 2004

TO : Rochelle Kentov, Regional Director
Region 12

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: International Longshoremen's
Association, AFL-CIO, and its
Locals 1359, 1922 and 1922-1
(Disney Cruise Line)
Case 12-CC-1269

This case was submitted for advice as to whether the Unions' display of an 8-foot tall caricature of a rat with references to a neutral employer, towed on a small trailer behind a pickup truck bearing signs identifying the Unions' primary labor dispute and driven in the area of the neutral employer's premises, violated Section 8(b)(4)(ii)(B). We agree with the Region that in the circumstances of this case it did not.

Briefly, the Unions have a primary area standards labor dispute with FTS, which provides stevedoring services at Port Canaveral, Florida, for Disney Cruise Lines ("Disney Cruises"), an indirect subsidiary of Walt Disney World Co. In June 2003,¹ the Region found merit to a charge in Case 12-CC-1265, alleging that the Unions unlawfully picketed at Disney World, about 65 miles from Port Canaveral, because FTS has no presence at Disney World. That charge was withdrawn after a non-Board settlement, in which the Unions agreed to give Disney Cruises ten days notice of "expressions of free speech." On October 1, Disney Cruises filed a charge in Case 12-CC-1267, alleging that the Unions unlawfully threatened to engage in Section 8(b)(4) activity when the Unions sent Disney Cruises a letter pursuant to their settlement. That letter informed Disney Cruises that the Unions intended to drive a van with signs, towing a trailer with a mounted rat caricature, from Port Canaveral to Disney World. The Region dismissed that charge, concluding that it was not clear from the Union's letter that the conduct described would be unlawful. An appeal of that dismissal was denied.

On December 8, a Disney World employee saw a pickup truck driving on a public 4-lane divided thoroughfare through part of the large Disney World area complex. The

¹ All dates are in 2003.

pickup had signs on both sides of the bed, approximately 4 feet by 8 feet in size, with the following large text:

FREE SPEECH STATEMENT Disney Cruise
Lines uses Florida Transportation
Service as its Stevedore and such
Stevedore pays Wages and Benefits below
Union Standard

The pickup towed a small trailer with a mounted caricature of a rat standing on a wedge of cheese, approximately 8 feet high total, holding a banner approximately 2 feet by 2 feet with the words "SHAME ON MICKEY." The truck drove on the thoroughfare for about 20 minutes, at approximately 25-30 miles per hour where the speed limit is 35 miles per hour, making three u-turns along an approximately 2-mile long stretch of the thoroughfare before exiting the area on an interstate highway. The pickup stopped only for traffic lights; no sound was broadcast from the pickup; and the Unions engaged in no other activity involving the pickup or the trailer.

On December 16, the same pickup towing the same trailer again drove around the Disney World area for approximately 15 minutes, on the same public thoroughfare as before, as well as through a nearby planned residential community associated with Disney World and on several busy public highways through commercial areas near Disney World. Disney Cruises asserts that the pickup then stopped in 3 different parking lots of non-Disney businesses along those highways; Denim World, for an undetermined amount of time, apparently to adjust the rat caricature; a McDonald's restaurant, for approximately 20 minutes; and then a Chic-Fil-A restaurant, for approximately 45 minutes. Disney Cruises does not assert that Union agents spoke with anyone in those parking lots, handbilled, or engaged in other potentially confrontational conduct.

We agree with the Region that the charge should be dismissed, absent withdrawal, because there is no evidence that the Union engaged in picketing or other confrontational conduct violative of Section 8(b)(4)(ii)(B). We initially note that the signs are not misleading, in that they truthfully advise the public of the Unions' primary dispute with FTS, and correctly identify FTS' relationship with Disney Cruises. We also agree that the Union agents neither picketed in the traditional sense, nor did they station their pickup and rat caricature at entrances to the neutral's property which arguably could be "signal picketing."² The pickup and trailer, on two days for short

² Compare, e.g., Iron Workers Pacific Northwest Council (Hoffman Construction), 292 NLRB 562, 562 n. 2, 571-576

periods of time, drove on public highways leading to other businesses as well as to Disney World entrances, stopping only at stop signs and, on December 16, in the parking lots of three non-Disney businesses. At no time did the Union agents handbill or broadcast sound messages,³ or attempt to communicate with the public other than the message on the signs. Accordingly, we agree that there is no evidence of confrontational coercive conduct within the meaning of Section 8(b)(4)(ii)(B).

B.J.K.

(1989), enfd. 913 F.2d 1470 (9th Cir. 1990) (union supporters standing near picket sign at neutral gate signaled employees); Electrical Workers Local 98 (Telephone Man), 327 NLRB 593, 593 and n. 3 (1999) (finding "signal picketing" where, among other things, union agent stood near neutral gate and wore observer sign that flipped over to reveal same sign being used by union picketers at primary gate).

³ Compare Carpenters (Society Hill Tower Owners Ass'n.), 335 NLRB 814, 826-28 (2001)